

1 Program Director. On November 28, 2001, Ms. Thompson issued a determination denying
2 Appellant's request.

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4 In accordance with WAC 251-04-040(6), Appellant's original date of hire is October 1, 1989. The
5 record before the Board establishes that from October 1991 through March 14, 2001, Appellant's
6 pattern of work consisted of working as a UW temporary custodial employee from October through
7 April, working as a contract employee doing custodial work at the UW from May thru September,
8 and then resuming work as a temporary custodial employee for the UW in October. Respondent
9 monitored Appellant's hours of work as a temporary UW employee to ensure that he did not exceed
10 1050 hours in any 12 consecutive month period.

11
12 In spite of Respondent's efforts to monitor Appellant's hours of temporary work, between October
13 1998 and April 1999, Appellant worked 1078.5 hours, thereby exceeding the 1050 hour threshold.

14 The Director's determination concluded:

15 The director's authority to grant remedial action is discretionary and is not required
16 by WAC 251-12-600 if a temporary employee works over 1050 hours. While
17 respondent did work Mr. Myers over the 1050 hour limit in the twelve consecutive
18 month period starting from October 1, 1998, the institution overall has done well to
19 maintain Mr. Myers' temporary employment within the required limit.

20 On December 24, 2001, Appellant filed exceptions to the Director's determination with the
21 Personnel Appeals Board. Appellant's exceptions are the subject of this proceeding.

22 **Summary of Appellant's Argument.** Appellant worked as a custodian. He argues that
23 Respondent did not put forth a good faith effort to comply with the temporary appointment rules.
24 Appellant contends that Respondent scheduled him to work the maximum hours allowed under the
25 temporary rules and then, when he neared the 1050 hour threshold, the university switched him to a
26 general employment agency where he continued to perform custodial worked at the UW. Appellant

1 argues that Respondent did not make a good faith effort to comply with the temporary appointment
2 rules, but rather, made a good faith effort to circumvent the rules. Appellant asks that he be given
3 permanent status proportionate to the actual hours that he was employed to work at the UW.

4 **Summary of Respondent's Argument.** Respondent admits that Appellant exceeded the 1050 hour
5 threshold but asserts that it was an oversight. Respondent contends that when the university learned
6 of the oversight, Appellant's hours were ended immediately. Respondent asserts that the rules allow
7 the university to work a temporary employee indefinitely for six months with the following six
8 months off, provided the hours worked do not exceed 1050 during any 12 consecutive month
9 period. Respondent acknowledges that Appellant was a good worker, but concedes that they
10 discontinued his employment when he filed his appeal.

11
12 **Primary Issue.** Whether the Director's determination to deny Appellant remedial action should be
13 affirmed.

14 **Decision of the Board.** It is undisputed that Appellant's hours of temporary work exceeded 1050
15 between October 1998 and April 1999. Respondent was clearly aware of its duty and responsibility
16 to monitor Appellant's hours of work and to comply with the provisions of the temporary
17 appointment rules. For the most part, they successfully did so. However, we are alarmed by the
18 recurring pattern of Respondent's employment practices that kept Appellant working as a
19 "temporary" custodian at the university for over 10 years. Respondent intentionally manipulated
20 Appellant's hours of work between temporary and contract employment to avoid conferring him
21 with the permanent status and benefits provided to classified state employees. While prior to April
22 1999, Respondent may have complied with the letter of the rules, the applicable rules do not contain
23 an exception or excuse for Respondent based on substantial compliance. More so, the intent of the
24 rules and the highest standards of state human resource practices lead to inclusion in the civil
25 service with exclusion being the exception within narrowly defined parameters.

1 Based on the facts and circumstances of this case, we find that Appellant should have permanent
2 status and be entitled to benefits as of April 23, 1999, when his hours exceeded 1050. Furthermore,
3 because of Appellant's long-term pattern of employment at the university, his periodic increment
4 date should be April 23, 1999. However, under these unique circumstances, his seniority and
5 periodic increment dates should not be adjusted to exclude the time he worked as a contract
6 employee at the university.

7
8 **Conclusion.** Appellant's appeal on exceptions should be granted and the determination of the
9 Director, dated November 28, 2001, should be modified.

10 **ORDER**

11 NOW, THEREFORE, IT IS HEREBY ORDERED that the appeal on exceptions by Appellant is
12 granted and the Director's determination, dated November 28, 2001, is modified as follows:

- 13 1. Appellant is granted permanent status effective April 23,1999;
14 2. Appellant is entitled to all employee rights and benefits including sick leave,
15 vacation leave accrual, retirement and OASDI credit, effective April 23,
16 1999; and
17 3. Neither Appellant's seniority nor periodic increment dates will be adjusted to
18 exclude the time he worked as a contract employee at the university.

19 DATED this _____ day of _____, 2002.

20 WASHINGTON STATE PERSONNEL APPEALS BOARD

21 _____
22 Walter T. Hubbard, Chair

23 _____
24 Gerald L. Morgen, Vice, Chair